Supreme Court, U.S.
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No. 86-1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE MAINE CENTRAL RAILROAD COMPANY AND
THE PORTLAND TERMINAL COMPANY,

Petitioners,

—*v.*—

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES,

Respondent.

REPLY BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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July 17, 1987

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The list of the Petitioners' subsidiaries and affiliates required by Sup. Ct. R. 28.1 appears at page ii of the Petition for a Writ of Certiorari.

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ARGUMENT

The Railroad has presented for review the question of whether Congress may without meaningful restriction pass special legislation imposing specific, discriminatory burdens on a single individual. The Organization claims that there is no explicit constitutional restriction on special legislation enacted under the commerce clause, except the prohibition against bills of attainder and titles of nobility. (Org. br. at 8, n.4.) The Organization relies on the holding of the court below, that special legislation satisfies equal protection so long as Congress finds that the targeted individual is "uniquely situated." (A-10)[1]

But it does not follow from the proposition that Congress has "plenary authority over interstate commerce" (Org. br. at 4), that Congress may intentionally single out any individual for special, discriminatory treatment so long as that individual is "uniquely situated."[2] The point is not Congress's power to regulate interstate commerce or its power to enact general economic legislation. The point is that equal protection

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1. The Organization distorts the record below by stating that the Act merely "extended the cooling-off period." (Org. br. at 6) In fact, the Act retroactively revoked the Railroad's existing work rules and rates of pay, specifically imposed the significantly more expensive and burdensome work rules and rates of pay that existed before the Organization's March 3, 1986 strike, and effectively destroyed the status quo in effect at the time the Act was passed.

2. The Organization argues that the Railroad is uniquely situated because of the Organization's right to engage in secondary picketing against the Railroad. But, secondary picketing is threatened whenever any major railway labor dispute reaches the self-help stage. *Burlington N. R.R. Co. v. Brotherhood of Maintenance of Way Employes*, 107 S. Ct. 1841 (1987). The Railroad is not the source of secondary picketing; Congress is the source. And if Congress really wishes to restrict secondary picketing in the railroad industry, it may certainly do so in a constitutional manner by enacting general economic regulation.

restricts Congress from enacting special legislation imposing unique burdens on a single individual, even for the announced purpose of achieving a more general economic goal. *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79 (1901); *McFarland v. American Sugar Refining Co.*, 241 U.S. 79 (1916).

Cotting and *McFarland* have never before been questioned or modified. They remain the law of the land, and they clearly stand for the legal proposition that special legislation which intentionally discriminates against and imposes special burdens on a single company violates equal protection.

In *Cotting* this Court struck down special legislation that affected the rates of a single stock yard company, but not the rates of any other stock yard. The Court conceded that the legislature had a right to regulate the stock yard industry, which, like the railroad industry, is an industry "in which the public has an interest." 183 U.S. at 85. The Court did not rely, however, on the source or breadth of the legislative power to regulate. Instead, it posed the question: "But to what extent may this regulation go?" *Id.* The Court found that special legislation singling out a single stock yard violated equal protection, relying on the widely-followed decision of *Vanzant v. Waddel*, 10 Tenn. (2 Yerg.) 230, 240 (1829): " 'Every partial or private law, which directly proposes to destroy or affect individual rights . . . is unconstitutional and void. Were this otherwise, odious individuals and corporate bodies would be governed by one rule, and the mass of the community, who made the law, by another.' " 183 U.S. at 105.

In *McFarland* this Court again struck down special legislation directed against a single company. It was argued that the special legislation struck down in *McFarland* was justified by the target company's monopolization of the sugar industry, which made the company a legitimate class of one. 241 U.S. at 84. The Court,

however, applied a very strict standard of review. Speaking unanimously through Justice Holmes, the Court stated:

> The statute bristles with severities that touch the plaintiff alone, and raises many questions that would have to be answered before it could be sustained . . . . If the statute had said what it was argued that it means, that the plaintiff's business was affected with a public interest by reason of the plaintiff's monopolizing it, and that therefore the plaintiff should be prima facie presumed guilty upon proof that it was carrying on business as it does, we suppose that no one would contend that the plaintiff was given the equal protection of the laws.

241 U.S. at 86-87

The reply to *Cotting* and *McFarland* cannot be that these cases were decided before *Wilson v. New*, 243 U.S. 332 (1917). (Org. br. at 7-8, n.4) *Wilson* arose out of a Congressional act that set a general wage and hourly rate standard for employees throughout the American railroad industry. *Id.* at 343-44. The equal protection challenge to that act was that it affected only "employees engaged in the movement of trains," and not railroad employees who were otherwise employed. *Id.* at 354. No one disputes that such general classification in the railroad industry is constitutional. But the holding in *Wilson* does not conflict with *Cotting* and *McFarland* or the proposition that special legislation imposing special burdens on a single individual is subject to heightened scrutiny.

The rational basis test provides no meaningful review of special legislation. To justify special legislation by the "unique circumstances" of the targeted individual is to engage in a tautology: unique laws will always apply to unique circumstances, just as general laws will always apply to general circumstances. It makes no

sense to assert that equal protection is satisfied whenever a law applies only to one individual.

There is a real need for review of this issue by this Court. The problem of special legislation is recurrent. That Congress passed subsequent special legislation against the Railroad, which is now being challenged in the court below, argues in favor of a writ of certiorari, not against it. (Org. br. at 9-10) The danger of special legislation is serious. Under the rationale of the court below, any disfavored individual may be discriminated against based solely on a Congressional finding that the individual is "uniquely situated."

CONCLUSION

The decision of the court below fails to identify any meaningful restriction on Congress's power to enact special legislation. This Court's intervention is necessary to restrict this dangerous practice. Accordingly, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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